RAINES LAW UNDER FIRE IN COURT.

Attorneys Choate and Untermyer Declare It to Be Unconstitutional.

Claim the Legislature Has No Power to Fix Different Penalties for the Same Offence.

WEAK POINTS OF THE MEASURE

Attorney-General Hancock Makes a Speech Defending the Provisions of the Law—Julius Mayer Also Argues.

The case to test the constitutionality of the Raines law, in which Fred G. Elnsfeld appears as relator and the members of the Board of Excise as respondents, was argued yesterday afternoon before the Appellate Division of the Supreme Court, with Chief Justice Van Brunt and Associate Justices Barrett, Williams, Patterson and Rumsey on the Bench. Joseph H. Choate and Samuel Untermyer appeared for Elnsfeld and Attorney-General Hancock and Julius Mayer for the Board.

Mr. Untermyer opened the argument. He stated that on March 23, 1896, Elnsfeld applied to the Board for a license for the premises at No. 60 Beekman street. The license was refused on the ground of lack of power. These proceedings were then instituted, but Justice Pryor, before whom the case was argued, dismissed the writ of certiorari, and the appeal was taken.

ATTACK THE LAW.

The constitutionality of the act is attacked on the following grounds:

First—It violates article 3, section 30, of the Constitution in that it appropriates public money for local or private purposes, and was not passed by the necessary two-thirds vote of each branch of the Legislature.

Second—It ignores and violates article 12, section 2, of the revised Constitution, providing for the classification of cities, and is in direct conflict with the constitutional classification.

Third—So far as it concerns certain provisions it is a special city law, and whatever is the tenor of the act, it creates special rules for cities of the first class, and should have been submitted to the mayors of those cities.

Fourth—It is a tax measure, pure and simple, not a police regulation. It takes away all pre existing police regulations, allowing them no opportunity to use their own discretion and makes the holding of a license an absolute right on the payment of the tax.

Attorney-General Hancock said that as he understood the argument of the counsel for the relator, his principal objection was to the appropriation features of the act. Continuing, he said:

"If these moneys can not be turned over as provided, it would be unfortunate for the cities and towns, but would not necessarily invalidate the act."

Julius Mayer, the attorney for the Excise Board, confined his argument mainly to the regulations imposed by the new law.

CHOATE SPEAKS.

Joseph H. Choate, in the closing argument for Elnsfeld, said that the act affected not only those who pay the liquor tax, but those who do not. Continuing, he said:

"The absolute irregularity throughout the State in the matter of inflicting penalties constitutes a serious question for discussion. A man who sells a glass of liquor this side of the Harlem River or Spuyten Duyvil Creek without conforming to the law must pay a penalty of $1,600; but on the other side of the Harlem River or Spuyten Duyvil Creek, the minimum penalty would be $200.

"This is arbitrary, and the enactment of such a law is not within the power of any body."

"Formerly the County Treasurer collected the tax, but for some reason they could not trust the county treasurers in New York, Brooklyn and Buffalo, and they appointed special deputies for those cities. Does that not make the money collected public money? If the Legislature can beat the devil around the bush, under the Constitution, with this law, they can do it with any other tax. The city of New York had a revenue from its Excise law that was uniform throughout its borders. The State strikes this out and says: 'We will take all this revenue and give you what we please.'"

Mr. Choate also argued at length upon the unconstitutionality of the act with regard to the classification of cities.

Joseph H. Choate in Action.

The well-known lawyer made an argument in court yesteday in a test case against the Raines law. He declared the measure to be unconstitutional.

TO BEAT THE RAINES LAW.

Pretext by Which Thirsty New Yorkers Will Try to Evade Its Prohibitory Provisions.

Still you keep o' the windy side of the law.—Twelfth Night.

The good people of New York having, through the beneficent wisdom of their legislators, received a new and unprecedented excise law, are now earnestly engaged in seeking out pretexts for its nullification. While they stand awe-stricken in the presence of the genius that framed it, while they admire in it a measure most fearfully and wonderfully made and most commendable in its endeavor to step between themselves and the menace of the demon rum, yet they feel that they are not quite worthy of it. Their virtue was not formed to bear up against the strain of complying with it. Therefore they seek out means of evading it. And because of the manifest looseness in the framing of the bill and the ingenuity of the people this has not been difficult.

In the law you will read sub-division 4 of section 11 as follows:

Upon the business of trafficking in liquors upon any car, steamboat or vessel within this State, to be drunk on such car or on any car connected therewith, or on such steamboat or vessel, or upon any boat or barge attached thereto, or connected therewith, there is assessed an excise tax, to be paid by every corporation, association, copartnership or person engaged in such traffic and for each car, steamboat or vessel upon which traffic is carried on, the sum of two hundred dollars.

Now there are persons who denominate this as a "soft snap." They say that when hot weather comes it is their intention to go down and hire a very large barge on the waters of the East River. That barge shall be stocked magnificently with an ample assortment of spirituous liquors, whereof the populace of the East Side delights to partake. Then, the thing having been widely exploited in the "tough" regions of the city and the trip duly scheduled, this loaded barge will voyage up as far as Twenty-thirty street, in tow of a small and dilatory tug, stopping at various points in her course to take on passengers or let them off. Thus, at the comparatively small expense of a $200 license and the hire of the barge, this thing might be accomplished. An old railway car, sidetracked in a vacant lot in Harlem, or a number of them, might help keep the northern population in a cheerful state of mind on the same principle, say these crafty persons.

Then there is a still deeper scheme concocted by those who feel an interest in that glorious institution, the French table d'hote. It is provided in sub-division 2 of section 11:

Upon the business of trafficking in liquors in quantities less than five wine gallons, no part of which shall be drunk on the premises where sold, or in any outbuilding, yard, booth or garden appertaining thereto, or connected therewith, there is assessed an excise tax to be paid by every corporation, association, copartnership or person engaged in such traffic, and for each such place where such traffic is carried on by such corporation, association, copartnership or person, if the same be in a city having by the last State census a population of fifteen hundred thousand or more, the sum of five hundred dollars.

The above-mentioned is a very recent scheme, but there are several others almost as effective. The idea of converting an ordinary barroom into a hotel by means of a fenced off corner and little beds in it is widely discussed among the circles interested.

Yamagata and Suite in Chicago.

Chicago, April 10.—Marquis Yamagata, Field Marshal of Japan, and suite, arrived in this city from Omaha at 7:45 o'clock this morning. They were driven to the Auditorium Hotel, where they will remain until to-morrow, when they leave for the East.

Maggie Muth, Who Is Missing from Home.

The police have been asked to look for Maggie Muth, a pretty seventeen-year-old girl, residing at No. 532 East Seventeenth street, and who has been missing since Saturday. She wanted to marry Al Rice, the driver of a mail wagon, who is several years her senior, but her parents objected on the ground that they did not know Rice; that the family was in mourning for a daughter who died a few months ago, and that Maggie was too young.

Tuesday night the mother of the girl met Rice on the street. He was carrying Caggie's jacket on his arm. She asked him where her daughter was, and he said: "We are married. You dont find out where she is."

POTATOES MAY BURN AND MEN STARVE.

The Charities Department Cannot Buy the Over-Burdened Farmers' Crop.

Tubers Selling at 8 Cents a Bushel and Used for Fuel While the City Pays 30 Cents.

ONLY COAL CAN BE GIVEN AWAY.

Red Tape Prevents an Organized Agency of Relief from Taking Advantage of a Wonderful Opportunity to Show Its Usefulness.

Farmers in this State are selling potatoes for 8 cents a bushel, or burning their crop because they cannot sell it at any price. The Department of Public Charities of New York City is paying about 30 cents per bushel, or 77 cents per barrel for potatoes.

Silas C. Croft, president of the Department of Public Charities, said yesterday: "We cannot buy any of the farmers' potatoes, as we made a half-yearly contract for potatoes in December, and will not buy any more until the latter part of June. The figures for the purchase of this vegetable went into our estimate sent to the Board of Apportionment, and we have no money with which to take advantage of the slump in the market.

"The law compels us to advertise for bids for all foods which cost $1,000 and more for the six months. The lowest bid put in last December was 77 cents a barrel, and the contract was awarded to the New York and New Jersey Produce Company, which, I believe, is made up of a dozen or more farmers.

"Even if allowed to go up in the country and buy vegetables at the low prices stated, we would have no place to put them. They would rot on our hands, the same as they are rotting there."

Asked if he did not think no trouble would be experienced in disposing of such food, Mr. Croft said:

"That may be; but, you see, it is entirely out of our jurisdiction to accumulate material more than is necessary for the places under our care."

President Croft was asked if he did not think it would be a good plan to establish a public distributing point, the managers of which would be detailed to buy food for the poor when it was down to such figures as potatoes are at present.

"It might be," he said. "I do not think there is any more suffering now than there ever was."

When his attention was called to the recent remarkable deaths and suffering from hunger, Mr. Croft said that at times distressing conditions were aggravated, but that under the present system all the sufferers could not be reached.

G. W. Wanmaker, the purchasing agent, said the present contract for potatoes for the charity institutions calls for 5,300 barrels, which, at the contract price of 77 cents, would amount to $4,081. The same quantity at the price quoted from the country (8 cents a bushel) could be bought for about $1,060.

The outdoor poor branch of the department, at Eleventh street and Third avenue, is managed by W. F. Walsh.

"I can only give away coal," he said. "This branch was allowed $15,000 this year, where last year it was allowed $30,000. During the Winter I was authorized to give a half ton of coal to every deserving family. I found that I had 5,000 more orders than I could fill. It would be much better if no appropriation were made for this place than to be compelled to turn so many persons away. Under the circumstances the idea of giving away potatoes could not be entertained."

Where Potatoes Are Burned.

Penn Yan, N. Y., April 10.—Carloads of potatoes can be purchased in this county up to 200,000 bushels at 8 cents per bushel. The retail price is 20 cents. Farmers would not sell last Fall when offered 15 cents, and now buyers will only take perfect, medium-size tubers at any price. Some farmers are burning their potatoes, and find they burn very well on a bed of coals. Most of the overstocked farmers are using their unsalable crop to fatten pigs.

AN HONOR FOR GEN. MILES.

Elected an Honorary Member of the Union League Club.

General Nelson A. Miles was unanimously elected to honorary membership in the Union League Club at the regular monthly meeting on Thursday night.

Rev. Dr. Charles H. Parkhurst was the last man to receive this honor.

MIXES UP THE MEN IN THE WORKHOUSE.

One John Murphy Benefits at the Expense of Another of That Name.

Long Term Sentences Are Cut Short and Short Terms Are Made Longer.

CURIOUS PHASES OF THE WILDS LAW.

Commitments of Magistrates Practically Nullified by the Warden—All Depends on Whether It Is a First Offence or Not.

John Murphy, a bartender, of No. 108 East One Hundred and Eighth street, was committed to the Workhouse on April 7 for disorderly conduct by Magistrate Flammer under a sentence of six months or $500 fine. Another John Murphy, a laborer, of No. 342 East Twenty-third street, was committed on the same day and for the same offence by Magistrate Deuel for three days. The long-sentence man, however, will be discharged this afternoon at 4 o'clock, while his short-sentence namesake will be held for eighty days.

This is not, as would at first sight appear, the result of mistaken identity, but comes about through the action of what is known as the Wilds law, which went into effect on April 4, 1895. The law provides that the Superintendent of the Workhouse must ascertain how many times every prisoner has been committed for disorderly conduct, intoxication or vagrancy under the law.

One clause of the law reads:

In the case of a person who has not been previously committed for one of the three offences specified, such person shall be discharged at the expiration of five days from the date of his commitment.

Thus the first John Murphy, although Magistrate Flammer thought he ought to stay for six months, goes out this afternoon, as the date of his commitment, the 7th, counted as the first of the five days. The law further provides that a man who is convicted on a second charge must be held twenty days; for the third, forty days; for a fourth, eighty days; for a fifth, one hundred and sixty days, and for a sixth, six months. For a first offence there is, as an alternative, a fine of $5.

The magistrates usually fix the term of imprisonment, but the Warden of the Workhouse, acting under the advice of the Corporation Counsel, interprets the law as being beyond the magistrates' control.

There were fifteen men among those received at the Workhouse on Thursday last whose terms were thus arbitrarily altered. Among the most striking of recent cases is that of Herman Hartman, committed on the 5th for six months for disorderly conduct. It is his first offence, and he will serve only five days. James F. Thomas, committed on the 5th, for two months, also serves five days. Alfred Sheridan, committed on the 3d for five days, will be held forty days, as will also Joseph Maxwell, committed on the 2d for three days. Thomas Doyle, committed on the 7th for six months, gets only five days.

Neither the magistrates nor the Commissioner of Correction has any power to modify the terms of imprisonment. That can be done only by application to the Governor.

TO WAGE WAR ON WOMEN'S HIGH HATS.

The Brooklyn Women's Health Protective Association Has So Decreed.

It Will Notify All Theatre Managers to Post Notices in the Lobbies.

A TORRENT OF FEMALE ORATORY

Before the Resolution Was Passed the Members Discussed the Question with Enthusiasm—All Opposed Towering Headgear.

The woman's high theatre hat must go. The Women's Health Protective Association of Brooklyn has decreed that the towering headgear of the fair sex shall no longer annoy and torment theatregoers. The organization realizes that patrons of theatres go to see plays and those who take part in them, and not to witness millinery displays, whose chief feature is waving plumes and towering bunches of artificial flowers that mar the beauty of those who wear them and annoy people who must sit behind them.

The organization met at No. 204 Livingston street yesterday, and discussed several routine matters. The secretary then read a letter which requested the members to condemn the high theatre hat.

The letter started a torrent of feminine oratory that was refreshing to listen to.

Mrs. James Scrimgeour, the president, said that while the subject was not strictly within the scope of the organization's plans, yet it was one of general interest; and, therefore, not foreign to the purposes of the association. It pained her intensely to sit in a theatre behind a woman who wore a towering hat which prevented her from seeing the very thing she went to see—the play.

Mrs. Calvin E. Hull brought the question to a focus by moving that the organization request theatre managers to post notices in the lobbies requiring women to remove their hats while witnessing plays.

The Rev. Alice Wright said high hats were an abomination. Mrs. Haskell suggested that the managers of Brooklyn theatres be requested to insert hat notices in the programmes. Miss Trapper said she would go a step further than her associates and condemn the small hats that were fitted out with tall trimming.

Mrs. Hull made a brief address, saying that it would be a good thing if women would wear lower hats in churches as well. The resolution was adopted unanimously.

The Municipal Committee, which has been looking after men who violate good manners and decency by squirting tobacco juice on cars, trains and ferryboats, reported that there was a marked improvement in the habits of men since the association had called their attention to breaches of good form and refined taste.

The committee stated that the men who travel on elevated roads had not been curbed to any great extent, but there was a change for the better. The change for the good was noticeable on surface roads. It was resolved to continue to agitate the subject until a man who expectorates in a public conveyance was a thing of the past.

"PLEASE CHAIN US, DEAR MR. PIERCE."

Written Plea of Little Lewis Hall, an Inmate of the Westchester Home.

Miss Dealing Testifies to Punishing Children Corporally Since the State Board Forbade It.

A GIRL OF SEVENTEEN IN IRONS.

Miss Wright, a Matron, Says Shackles Give Boys No Inconvenience or Discomfort, and That They Play Just the Same.

From the defence being set up by Superintendent James W. Pierce, of the Westchester Temporary Home, it would appear that when the inmates were not clustering around him and asking to be kissed they were begging to be put in chains. The boys there, it seems, yearn to be shackled, and the wonder is why chains are not given as a reward of good behavior and not as a penalty for infraction of discipline. At a previous hearing a colored boy testified that he had asked to be chained to a bad boy so that the latter could not run away again.

At the hearing at White Plains yesterday there was put in evidence a letter from one of four boys who had run away in February and had been recaptured. It read:

Dear Mr. Pierce—I thought I would write to you and let you know I am sorry I ran away, but I ought to think about it before I went, and I wouldn't be put away from the boys. I would like to ask you this: We would all like to know if you would please put chains on us and let us go down on the play ground, and let us make all the beds, as we have been doing the last three mornings? We pray to God every night because we can't do anything without it.

LEWIS HALL.

BEAT CHILDREN WITH A RULER.

The first witness was Miss Daisy Carpenter, who had been a kindergarten teacher in the Home for one year and three months. She had punished children herself when they made a disturbance. She used a common school ruler, but the blows did not draw blood. The children were always glad to see Pierce. Then Miss Carpenter positively declared that there had been no corporal punishment in the Home since January 1, and it was extremely difficult to manage the children without it. Miss Carpenter frequently smiled at the lady managers during her testimony.

Miss May Dealing has been a matron in the institution since December 4, and was there for six weeks two years ago. She said it was hard to manage the boys, now that corporal punishment was abolished. Pierce always expressed sorrow when compelled to inflict punishment. Four boys ran away, and were afterward confined to a well heated and lighted room for two weeks. One of these was Lewis Hall, who wrote the letter asking to be chained. Hall had been shackled before.

Under cross-examination Miss Dealing admitted she had used corporal unishment since it had been abolished by the State Board of Charities in January. Her memory became confused apparently and she could not remember whether she had slapped or spanked children more than thirty times since that date, whether she told Pierce she was still using such punishments or even whether she had seen Pierce inflict corporal punishment since that date.

AN EAMPLE OF DISCIPLINE.

Miss Dealing then reluctantly told how Pierce had compelled a refractory child to sit down. The superintendent seized the youngster, and pushing him backward, tripped him. The result was that the child forcibly struck the floor in a sitting posture. This was done three times, when Pierce considered that the child had received the proper amount of instruction. She used all the strength of her arm in spanking, she said. She considered the use of the cat-o'-nine-tails justified.

Miss Ophelia Wright, a matron at the home for ten years, testified that she had seen chains only on Theresa See and Sarah Shieller, but she had seen no blood stains on Theresa's body. Many boys were chained, said she, but they played with the other boys as though the shackles gave them no inconvenience or discomfort.

Cross-examination, however, developed the fact that Miss Wright had also seen Carrie Miller in chains for three or four weeks. The girl was seventeen years old then.

The hearing was then adjourned until Thursday next.

BUILDING "SPITE" TENEMENTS IN BEDFORD PARK.

Builder James J. O'Brien said yesterday that the residents of exclusive Bedford Park had no one but themselves to blame for the annoying outcome of their fight with him. He added that whether they liked it or not, he would continue with all expedition the erection of the three three-story frame tenement buildings on the Southern Boulevard. The Bedford Park people, however, had one way out of their dilemma. They might, if they chose, buy the land on which the tenemtns were going up. He would sell out for $7,000, which was a good bargain. "This fight," said O'Brien, "is none of my seeking. It was forced upon me. I have been treated very badly. Oscar L. Marsden, the broker, is the leading spirit in the opposition to me. He is after cheap notoriety, and is throwing out an elegant bluff that he is actuated only by the highest motives. The trouble began last Fall. In August, 1895, I bought two lots on Jerome avenue, 28 by 165 feet, for speculation. I thought it would be a good site for a hotel. After I had built the hotel I applied for a license in the name of Joseph Weber, of Mount Vernon. When I made the application I was told by the Excise Board that I would have to furnish ten rooms for hotel guests. I did so, and after making other changes secured the approval of the Excise Inspector. Now while my hotel was being built none of the residents interfered. They waited until the building was finished to make their complaints. When the inspector's favorable report was turned in I expected there would be no further trouble in getting the license, but then the war upon me began in earnest. The leaders in it were members of the Bedford Park Club. They beat me out of the license. Until these men made me angry the idea of the tenement houses on my Southern Boulevard lots never entered my mind. I could nover have a congenial home among such neighbors. It was only four days ago that I started in on the tenements. They will be completed in two months. I see that Mr. Marsden has threatened to erect a glue factory, or something equally offensive alongside of my tenements. That doesn't frighten me. The more glue factories there are the quicker I'll find tenants for my tenements. James P. Sonneborn, of Sonneborn & Woolsey, Bedford Park real estate dealers, said: "There are two sides to this dispute. I know that O'Brien intended originally to build a home for himself on the Southern Boulevard. He can't, however, have more than one family to each floor. Nor can his opponents erect a glue factory next door to the tenements. There is a restrictive clause against such things."

O'BRIEN'S PROPOSED SALOON.

WHITELAW REID IN ARIZONA.

Cordially Received at Tucson and Entertained by the Chamber of Commerce.

Tucson, Ariz., April 10.—Whitelaw Reid, of New York, and his party arrived in a private car from Phoenix yesterday morning. They were greeted by a Chamber of Commerce committee, appointed for the occasion, and were later in the day escorted in carriages to the Old San Xavier Mission. A reception was given last evening at the home of Judge and Mrs. Barnes, in which many of Tucson's citizens participated.

Mr. Reid's health has improved. After visiting points of interest in Arizona he will travel toward California.